IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 276 OF 1989

Adgonda Girgonda Patil.... .. Appellant

Versus

Dharmu Sidappa Karande (since decd.)
by his L. Rs. & Ors. ... ... Respondents.

Mr. S. V. Gokhale with Mr. B. P. Apte for Appellant.

Mr. Raje Shirke with Mrs. V. R. Hombalkar for Respondent Nos.2 to 4.

-: ALONG WITH :-

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CORAM : ANOOP V. MOHTA, J.

DATED : 17TH NOVEMBER, 2005.

P.C.:

Both these second appeals have been admitted on the following two questions of law :

(1) In the fact of the admitted documentary

evidence in the form of the map Exhibit 78A and 7B drawn by the District Inspector of Land Records in 1969 which clearly showed the encroachment by respondent Nos.1 to 4 in the brook which resulted in the erosion of the appellants land, the judgments of the courts below are perverse when they held that the embankment made by the appellant on his land to protect his property caused damage to the land of respondent Nos.1 to 4.

(2) Whether the judgments of the courts below are entirely vitiated by virtue of the misreading of the documentary and oral evidence on record which clearly demonstrated that the bank erected by the appellant was to protect his own property and was not in the encroachment was made in the brook by respondent Nos.1 to 4.

2. The second appeal Nos. 276 of 1989 arises ;out of the judgment and decree dated 1st August, 1988 passed by the 3rd Additional District Judge, Sangli in Regular Civil Appeal No. 327 of 1981 arising out of the Judgment and Decree dated 30th June, 1981 passed

by the Civil Judge, Junior Division, Miraj (trial Court) in Regular Civil Suit No. 356 of 1974. By the order dated 20th June, 1981 the trial Court decreed the suit of the plaintiffs (respondent Nos.1 to 8 in the second appeal) whereby the appellant (original defendant No.4) and respondent Nos.9 to 14 have been directed by mandatory injunction to remove at their own costs the embankment (Bandh) constructed by them at and in the brook passing in between the lands of the plaintiffs and the defendants. The appellate court in Regular Civil Appeal No. 327 of 1981 filed by original defendant, confirmed the said trial court's order and dismissed the appeal by common judgment dated 1st August, 1988. Therefore, this second appeal No.276 of 1989 filed by appellant (original defendant No.4) against the said judgment and order.

3. By a judgment and order dated 30th June, 1981 the trial court decreed the Regular Civil Suit No. 256 of 1974 filed by the plaintiffs i.e. appellant and respondent Nos.5 to 10 in the present second appeal. By common judgment and order the appellate court dismissed both the Appeal Nos.327 and 328 of 1981 confirming the mandatory injunction as granted by the

trial Court. Therefore, the present second appeal No.277 of 1989 filed by the Appellant i.e. original Plaintiff No.2.

4. Head learned Counsel for the parties. Concurrent findings arrived at by both the courts below after considering the rival contentions as well as material placed on record and considering the facts and circumstances of the case, cannot be said to be perverse and/or contrary to the record. The issues as raised and as based on the evidence clearly established the fact that the defendants made embankment in the bed of the brook and it caused the change of the course of brook and damaged the land of the plaintiffs.

5. There was no question of interpretation of any documents or any misreading of oral or written documents in view of reasoning given by both the courts. Considering the evidence and the material placed on record, the courts below came to the conclusion that there is no possibility brought on record that by any minor act of putting bund by the defendants in their lands, there was likelihood of water of the brook entering the land of the

plaintiffs. This finding is based on the evidence of the witness and the material available on record.

6. Assuming for the moment that there is some substance in the submission as made based on the map i.e. Exh. 8, however, that itself cannot be the reason to hold that the reasoning given by both the courts are perverse.

7. The appellate court is right in observing that the lands of the Plaintiffs in Suit No.368 of 1974 are at the higher level compared to the land of the defendants. The construction of the bund in the bed of the brook done damage to the land of the plaintiffs cannot be ruled out. I am not convinced that all these concurrent findings are perverse and are required to reverse. There is no reason to interfere with the same at the instance of the appellant at this stage, after lapse of 23 years.

8. There is no substantial question of law as such have raised in the present second appeal. There is no case of perversity in findings. Both the questions as framed need no further discussion. Both the appeals, therefore, are accordingly dismissed. No order as to

costs.

Sd/-

(ANOOP V. MOHTA, J.)